

Nos. A19-0665

State of Minnesota
In Court of Appeals

Michelle L. MacDonald, MacDonald Law Firm, LLC,
Appellants,

v.

Michael Brodkorb, individually and doing business as
www.MissinginMinnesota.com, Missing in Minnesota, LLC, and
John and Mary Does,
Respondents.

APPELLANTS' REPLY BRIEF

Karlowba R. Adams Powell (#0327335)
835 Geranium Avenue East
St Paul, MN 55106
(651) 414-1616
adamspowelllaw@gmail.com

Attorney for Appellants

Nathan M. Hansen (#328017)
2440 Charles Street North, Suite 242
North St. Paul, MN 55109
(651) 704-9604
nathan@hansenlawoffice.com

Attorneys for Respondents

TABLE OF CONTENTS

REPLY ARGUMENT	3
I. INTRODUCTION	3
II. RESPONDENT’S ARGUMENTS ARE NONRESPONSIVE TO THE ISSUES MS. MACDONALD RAISES ON APPEAL	4
III. MS. MACDONALD IS ENTITLED TO PREVAIL BECAUSE RESPONDENTS OFFER NO COUNTER ARUGUMENTS..... 5	
CONCLUSION	8
CERTIFICATE OF COMPLIANCE	10

TABLE OF AUTHORITIES

Cases

<i>Bahr v. Boise Cascade Corp.</i> , 766 N.W.2d 910, 919–20 (Minn.2009).....	6
<i>State v. Crawley</i> , 819 N.W.2d 94, 104 (Minn.2012).....	6
<i>McKee v. Laurion</i> , 825 N.W.2d 725, 729-30 (Minn. 2013).....	6
<i>Sauter v. Sauter</i> , 244 Minn. 482, 485, 70 N.W.2d 351, 353 (1955).....	7
<i>Fabio v. Bellomo</i> , 504 N.W.2d 758 (Min. 1981).....	7,8

Rules

<i>Minn. R. Civ. 60.02</i>	6
<i>Minn. R. Civ. 12.01</i>	6

REPLY ARGUMENT

I. INTRODUCTION

There are two principal issues on appeal. The first issue is whether the Ramsey County District Court erred by failing to require an Answer, after denying a default judgment, thereby preventing the Appellants, Michelle MacDonald and MacDonald Law Firm, LLC, from discovery in order to litigate the allegations of the defamation in the complaint. In light of the denial of a default judgment, the second issue by *de novo* review is whether the court erred by granting summary judgment dismissal by ruling defendants could not be found liable on Plaintiffs' claims for defamation, defamation per se and defamation by implication.

Respondents' Michael Brodkorb and Missing in Minnesota, LLC ("Respondents") have filed a Brief with the Court, which largely fails to respond to the legal arguments Ms. MacDonald has advanced. *See* Brief of Respondent ("Respondents' Brief").

Respondents' arguments are simply incorrect, as where they argue that "the district court's denial of the motion for default judgment was not in error," when Ms. MacDonald is not arguing that the denial of the default judgment was in error, but rests her argument on the failure of the court to require an answer and discovery so that litigation could proceed, and that the summary judgment dismissal was premature. *See* Respondent's Brief at 9-11.

Respondents further argue that “there is no basis for a claim that due process was denied”, when Ms. MacDonald’s due process argument rests on the fact that the court denied a default judgment and granted a summary judgment dismissal in the same order.

Respondents argue incorrectly that “MacDonald was not denied due process as to her claim for defamation by implication, because she had a full and fair opportunity to be heard on the summary judgment motion.” But Appellants do not argue that they did not have an opportunity to be heard on the motion for summary judgment.

Despite offering no counter-argument to the arguments Ms. MacDonald has made, Respondents essentially argue that Plaintiffs’ appeal must be dismissed “because the issues it seeks to litigate were not raised below.” *See* Respondent’s Brief at 8-9.

This Court must reject the confused reasoning of Respondents and order that the case be reversed and remanded to require the Respondents to Answer the Complaint and proceed with discovery of the Appellants’ claims.

II. RESPONDENT’S ARGUMENTS ARE NONRESPONSIVE TO THE ISSUES MS. MACDONALD RAISES ON APPEAL.

Plaintiffs allege in the Complaint that Defendants intentionally and maliciously made false and defamatory written and verbal statements concerning Ms. MacDonald, the natural tendency of which is to hold her up to hatred, scorn,

contempt, ridicule and disgrace in the minds of right-thinking persons, and to deprive her of their friendly society.

Respondents fail to minimally or accurately describe the matters below, and overall fail to present relevant factual and legal arguments sufficient to affirm the district court below. For example, Respondents Statement of the Facts does not represent the facts of this case. *See* Respondents' brief at page 4-7. The facts of this case are those found in the Plaintiff's complaint (A.26-54) and in Respondent Brodkorb's short affidavit (A. 71-75).

In addition, rather than address Appellants' issues on appeal, Respondents' Brief rests on matters completely unrelated to this appeal including unsubstantiated insults, salacious personal "digs", and false or otherwise misleading personal attacks on Ms. MacDonald herself.¹ Respondents falsely intimated that Appellant is not licensed to practice law.² Respondents also repeatedly reference immaterial negative personal information regarding Ms. MacDonald. Respondents could not adequately address Appellants' legal arguments so instead resorted to personal attacks.³

¹ See for example Respondents' Brief pages 4... On April 5, 2013,, through "probation" page 6; and Respondents' Brief page 7... "MacDonald was "' through "period addressed in the Complaint" page 7; p. 17 "On May 4, 2015... through p. 19 " pet for review denied, (Minn. 07-21-2015)

² See Respondents' Brief p. 5.

³ Respondents bring to this courts attention Ms. MacDonald's past disciplinary proceeding, but fail to note that it is a direct result of a single complaint made to the Lawyers Board by Dakota County Judge. They further fail to note that the case was brought before the U.S Supreme Court. So too, Respondents bring to this court's attention the case of MacDonald, et al v. Wegner, et al, but fail to note that the U.S Supreme Court is convening on October 1, 2019 in a few short days relating to this case. See Respondents' Brief p. 6. Respondents further bring to this courts attention the "Drunk Driving" proceedings, again intimate that Appellant was convicted of drunk driving but fail to note that Ms. MacDonald was acquitted of the charge by a jury of her peers. See Respondents' Brief, p. 17, *See Respondents' Brief p. 5.*
⁵ Respondents bring to this courts attention Ms. MacDonald's past disciplinary proceeding, but fail to note that it is a direct result of a single complaint made to the Lawyers Board by Dakota County Judge. They further fail to note that the case was brought before the U.S Supreme Court. So too, Respondents bring to this court's attention the case of MacDonald, et al v. Wegner, et al, but fail to note that the U.S Supreme Court is convening on October 1, 2019 in a few short days relating to this case. See Respondents' Brief p. 6. Respondents further bring to this courts attention the "Drunk Driving" proceedings, again intimate that Appellant was convicted of drunk driving but fail to note that Ms. MacDonald was acquitted of the charge by a jury of her peers. See Respondents' Brief, p. 17,

It is not disputed that Respondents violated the rules of civil procedure and failed to adhere to these rules, including no formal answer to the complaint (See Rule 60.02), no answer to the motion for default (See Rule 12. 01). As such, this court is unable to properly review or otherwise meaningfully challenge the arguments Respondents made. Respondents raise a variety of arguments that either are without support in the record, and therefore are simply wrong, or are irrelevant to this appeal. Accordingly, Respondents argument which attempts to defend the district court’s disposition of this matter pursuant to Rule 56 are incorrect and without merit.

Rather than further dissect Respondents’ arguments, Ms. MacDonald rests on the arguments in her opening brief due to the largely non-responsive nature of Respondents’ arguments.

III. MS. MACDONALD IS ENTITLED TO PREVAIL BECAUSE RESPONDENTS OFFER NO COUNTER ARGUMENTS.

Appellants complained that statements made by the Defendants defamed them. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919–20 (Minn.2009); *State v. Crawley*, 819 N.W.2d 94, 104 (Minn.2012); *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013). It was determined that the Appellants’ complaint stated a prima facie case of defamation. While the court considered that the Defendants had “otherwise defended,” to avoid a default (A.11), the court also

“at approximately...” through p. 19 “pet for rev. denied (Minn. 07-21-2015)”. Respondents further intimated that Ms. MacDonald has been involved in criminal activity in a case involving “the disappearance of two children” which is untrue. See Respondents’ brief p. 21 as to “person of interest”

ruled that the Defendants made a weak showing as to reasonable excuse for failure to Answer (A.13)

Respondents offer no counter-arguments to the issues Ms. MacDonald raises on appeal. The reason they fail to do so is not merely procedural. They have no counter-arguments to offer.

Respondents made it clear that this was a summary judgement motion and not a Rule 12 motion to dismiss:

THE COURT: *** The initial notice was for motion for dismissal and or ---- in the alternative summary judgment. It's clear from the briefing that your--- Defendants are seeking summary judgment. *** So I just want to be clear, your not seeking--- Defendants are not seeking a motion to dismiss for failure to state a claim, a Rule 12 motion, but you're --- you're seeking summary judgment--- Rule 56 summary judgment.

MR. HANSEN: That's accurate. (Tr November 1, 2018; p.26-27; p.27 5-11)

The court's application in determining whether there is an absence of a genuine issue as a material fact requires a careful scrutiny of the pleadings, depositions, admissions, and affidavits, if any, on file. Sauter v. Sauter, 244 Minn. 482, 485, 70 N.W.2d 351, 353 (1955). But here, there were no witness depositions, no witness admissions or affidavits and no discovery. The court's

findings indicate a failure to thoroughly scrutinize the Plaintiffs' Complaint on file.

In assessing the evidence the Court must resolve all doubts and inferences about the facts in the favor of the non-moving party. *Fabio v. Bellomo*, 504 N.W.2d 758 (Min. 1981). Plaintiff's complaint and the short affidavit of Respondent Brodkorb represent the record as to facts. Since in a summary judgment motion all inferences must be drawn in favor of the Plaintiff--the party in opposition to the motion for summary judgment—the court must assume that Respondents were defaming Ms. MacDonald as set forth in her complaint. If Plaintiffs can support this assumption with proof, it may be entirely proper for the jury to find defamation.

Under proper statutory application, the record does not support the granting of the summary judgments. Plaintiffs' complaint and Respondents' affidavit which is this record cannot serve as the basis for a summary judgment dismissal. The district court, therefore, misapplied the law by failing to allow a record to be made. In view of the foregoing principles, the judgment of the trial court merits reversal.

CONCLUSION

For all the above reasons, and those set forth in Appellants' opening brief, this court should find that the district court erred in granting Respondents' Rule 56 summary judgment dismissal. This Court should reverse the district court decision in all respects and remand for discovery and trial.

Respectfully submitted,

Dated: September 27, 2019

POWELL LAW OFFICE

/s/ Karlowba R.

Adams Powell

Karlowba R. Adams Powell, Esq. (#0327335)
POWELL LAW OFFICE
835 Geranium Ave. E.
St. Paul, MN 55106
(651) 414-1616

ATTORNEY FOR APPELLANTS

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply Brief of Appellants conforms to Minn.R.Civ.App.P. 132.01, subd. 3(a)(1), for a brief produced with proportionally spaced font.

There are 1196 words in this Brief, not including the Table of Contents and the Table of Authorities. The word processing software used to prepare this Brief was Microsoft® Office Word 2010. The brief contains 13-point Times New Roman font.

Dated: September 27, 2019

POWELL LAW OFFICE

/s/ Karlowba R.

Adams Powell

Karlowba R. Adams Powell, Esq. (#0327335)
POWELL LAW OFFICE
835 Geranium Ave. E.
St. Paul, MN 55106
(651) 414-1616

ATTORNEY FOR APPELLANTS